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THE INITIATIVE AND REFERENDUM.

THIS country is facing to-day a crisis as serious as any which has occurred in its history, except that of the Civil War.

Popular government is being put to the test, and the outcome will determine whether the people of this country are capable of governing themselves.

The aim of popular government is, or should be, to give effect to the sober and mature judgment of a majority of the people, due regard being had for the rights and welfare of all. A people not able or willing to accomplish this cannot be said to be qualified for self-government.

Popular government is of two kinds—Representative or Republican, and Democratic. Under the former, the people select their representatives to act for them, who meet, deliberate and finally determine all questions by a majority vote. Thus the majority of the people, speaking through their agents, give final effect to their views. The representative principle is involved in the framing of constitutions, as well as in the passing of laws. Before any constitution can be submitted to the people for approval, it must first be adopted by a majority of the representatives elected by the people. By the constitution the people themselves, for their own protection, have imposed restrictions not only on the legislature, the Governor and every department of government, but upon themselves, as well. Any person or body of persons who disregard its provisions directly violate the will of the people, declared in the most solemn manner. In a democracy individual voters act *en masse*, and after such discussion and deliberation as conditions permit, decide questions by a majority vote. In the case of small gatherings, where an opportunity is afforded for mutual discussion and all can be heard, the result may fairly be said to be an expression of the opinion of

the majority. This was true of the New England town meetings, which are so often cited as examples of true popular government. But the moment that this system is applied to larger communities, it is obvious that no true expression of opinion can be obtained, and when an attempt is made to extend it so as to include many separated bodies of people it must inevitably fail. All opportunity for mutual discussion or deliberation is lost. Each individual expresses by his ballot his own personal opinion, and selection must be made from the mass of opinions thus submitted. The necessary result is that in the end, some one's individual views, unmodified by the opinion of others, must prevail, rather than the composite judgment of the majority.

Until the adoption of the representative method, no popular government extending over a state or nation of any considerable size had ever been successful. The history of the peoples of the past is full of examples of attempts at democracy, which failed because of the inherent weakness of the system. Greece, Rome, France and many other nations went through the same experience, with the same result, and for the same reason. The inevitable end was the man on horseback.

When our fathers met in Philadelphia in 1787 to frame a constitution for this nation, they faced conditions not unlike those which confront us to-day. A general disregard of law and established order prevailed. Demagogues and self-seekers shouted for the overthrow of government by law, and all the visionary theories which were being proclaimed, amidst fire and blood-shed, by the French populace, were being urged upon the people of this country; but, fortunately for this nation, better counsels prevailed. No wiser or more patriotic body of men ever assembled in the cause of true liberty. They were well versed in the history of governments, and the merits of the republican and democratic systems were fully considered. Their choice was deliberately made, and nowhere are the reasons for such choice better stated than by MADISON in the tenth essay of the "FEDERALIST." He says:

"From this view of the subject, it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the

weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalized and assimilated in their possessions, their opinions and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens and greater sphere of country over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves convened for the purpose."

Thomas JEFFERSON, one of the staunchest supporters of the rights of the people, advocated the same views, as has every statesman and every publicist since that time, until the present craze swept over the land.

The history of this nation since the adoption of the constitution has demonstrated the wisdom of its founders. For the first time, a government by the people has proved to be successful and stable. For one hundred and twenty-five years this nation has withstood all attacks from within and from without. It has grown to be a great world power and its people enjoy a prosperity such as is the portion of no other people on earth.

But like all other human institutions, it is not perfect. As the country has grown in prosperity and wealth, various evils have developed, and a widespread discontent has extended over the land. It is contended that legislatures have become corrupt, that ill-gotten wealth has undermined our institutions, and that the welfare of the mass of the people has been sacrificed for the benefit of a few. In consequence a blind demand has arisen for a change, and visionaries and agitators have been quick to seize the opportunity and charge all of these troubles to the representative system.

The panacea which they propose is to destroy the representative system of government, under which this nation has grown great, and substitute for it what is popularly known as the system of direct legislation. The Initiative, the Referendum, and the Recall are offered to the public as nostrums which will cure all the ills of government; and their adoption is being vociferously advocated by great numbers of well-meaning people, many of whom have but little comprehension of their true significance.

Let us consider, then, what is meant by the Initiative, the Referendum, and the Recall. By the initiative method any individual, whether learned or ignorant, honest or vicious, public-spirited or self-seeking, may propose, by petition any law or amendment to the constitution which he pleases and in such form and language as he may choose. If he can secure the endorsement of a small number of voters upon such petition (and such endorsements are easily secured) the proposed law or amendment must be submitted to popular vote, exactly as presented, without opportunity for modification or change, and without discussion, except such as interested individuals or newspapers may choose to give it. Any malcontent could initiate an amendment to the constitution to abolish the courts and to require controversies to be submitted to popular vote or to dispense with the legislature entirely and require all laws to be adopted by the initiative method.

It is no answer to say that the people are not likely to adopt such extreme measures. The plan must be judged by what is possible under it, and by means of it our present system could be entirely overthrown. In times of excitement, when the passions of the populace are aroused and those disposed to conservative views are intimidated by popular clamor, almost any measure might be adopted, which perhaps many of its supporters in their more sober moments would afterward regret. If the proposition had an attractive title, the average voter would probably look no further, and would vote for it without troubling himself with an examination of the proposition itself. If, however, a voter should take the trouble to examine

the merits of the proposition, and while approving its general purpose, should disapprove of some of its provisions, he is helpless, however desirable a modification might be. The proposition must be accepted or rejected as it stands. This is the fatal defect of the system. It rarely, if ever, happens that any individual can draft a complicated law which will be acceptable, even to himself, in the form in which it is first prepared. Discussion and consideration of opposing views are necessary before the best results can be obtained. There is no one who cannot learn something from discussion with others of matters with which he thinks he is perfectly familiar. This would be true, even if the proposer should be an honest, intelligent and public spirited man, but if, as is easily possible, a law should be initiated by an ignorant or dishonest person, the chances of securing legislation calculated to promote the public welfare would be reduced to a minimum.

It is because of these self-evident facts that the system is vicious and dangerous, affording an opportunity, as it does, of forcing a vote upon crude, ill-advised and possibly dishonest laws, which, through the ignorance or indifference of the voters, may become effective.

In Oregon at the election of 1908, a pamphlet of 126 pages of fine print, containing 10 proposed amendments to the constitution and 9 laws, with arguments *pro* and *con*, was submitted to the people to be voted upon. One act, having 55 sections was 21 pages in length. In 1910 the pamphlet had grown to 208 pages, containing 12 amendments and 21 laws, among which was an amendment to Article IV of the Constitution, containing 36 sections, all of which had to be voted upon as a single proposition.

At the election of 1910 in South Dakota, where the system prevails, when Governor Vessey was elected, his name was on a seven foot ballot, one foot being devoted to candidates and six feet to Initiative and Referendum propositions. The utter impossibility of securing any intelligent expression of opinion of the electorate by such method must be apparent to any person who will give the subject a moment's thought.

The Referendum as understood in the direct legislative programme should not be confused with what is some times known as the Referendum as practiced under the representative system. It sometimes happens that the legislature in passing laws of general interest provide that before they take effect, they must be submitted to popular vote, for approval. It is the legislative body, however, which determines that this shall be done. This is very different from the Referendum of the direct system. Here any individual, by a petition,

endorsed by a small percentage of voters, may require any law passed by the legislature to be submitted to popular vote, and unless a majority of the voters approve it, the law fails. This constitutes an individual veto upon the acts of the legislature and is capable of infinite abuse. Even if eventually a majority approve the law, the effect would be to delay and hold up legislation which might perhaps be much needed.

The recall of public officials is also a feature of this programme. The method here is similar to that provided in the case of the Initiative and Referendum. Any individual, by petition, may force an election to determine by popular vote whether a public officer shall continue to hold office, notwithstanding that his term of office has not expired. The natural effect of this would necessarily be that every public officer, instead of performing his duties conscientiously must be constantly on the lookout to make his actions conform to every passing whim of the populace, the clamor of newspapers and the shouting of agitators, under penalty of removal from office. Temporary gusts of passion and prejudice frequently sweep over even the most intelligent of people. History tells how in the old Athenian democracy, Aristides was deposed and banished by popular vote. One of the voters being asked for his reason, stated that he was tired of hearing Aristides called "The Just." The wild orgies of the French Revolution should teach a lesson to the unthinking people who are now shouting for a change. The practical working of the Recall is well illustrated by the recent experience of Seattle. A year ago Mayor Gill was recalled, though he still had a year of his term of office to serve, and Mr. Dilling was elected in his place. In less than six months a movement was started to recall Dilling, but the election failed, because of some irregularities; and a short time ago, Gill, who had been recalled less than a year before, was chosen at the primaries by a large majority as the candidate of his party at the ensuing election in March. Later Gill was defeated at the polls. During all of this time the city was in turmoil and business seriously disturbed.

Applied to judges, the Recall means the destruction of the independence of the judiciary—the feature of our government which from the beginning has been its greatest factor of strength and stability. No reasonable man could expect intelligent and impartial judicial action, if the judge at any time may be recalled, at the instance of a disappointed suitor or for the reason that his decision happened to be unpopular at the time.

But the most radical feature of the programme remains to be considered—The Recall of Judicial Decisions. Until Col. Roosevelt

delivered his address before the Ohio Constitutional Convention, the most radical advocate of socialistic doctrines did not venture to propose that judicial controversies should be determined by popular vote. It remained for Col. Roosevelt to advise that the decision of an uninformed and excited populace should be substituted for the calm and impartial determination of a judge. No nation could exist under such conditions. It would mean the complete overthrow of all government by law.

But of all these innovations which are being proposed the most serious and dangerous is the Initiative. It is the entering wedge. By use of it all of the others can be made a part of the system, even though not inaugurated in the first instance. By means of the Initiative, the constitution might be amended so as to include the Referendum, the Recall, the Recall of Judicial Decisions, or anything else which any visionary might choose to propose; and in periods of excitement and discontent, anything which promises a change is likely to be adopted, upon impulse, regardless of its real merits. Such is human nature.

In considering these various propositions and how they would work out practically, if adopted, there are many things which must be borne in mind.

There is a vital distinction between a bad plan of government, and the imperfect operation of a good plan. If our system of government is a good one and has worked well for many years and is the only kind of popular government which has ever worked at all, but defects have developed in the course of its operation, it is the part of wisdom to remedy the defects, rather than to destroy the system. It is a poor plan to burn down the house to kill the rats. It is undoubtedly true that at times some of our legislators have been corrupt and subject to evil influences. There never was a government since civilization began which has been wholly free from such difficulties. But they are not inherent in the representative system more than in any other. They exist in monarchical and democratic governments to as great an extent, if not greater. But such evils as do exist are not only susceptible of correction under our present system, but, as a matter of fact, most all of the grounds of serious complaint which constitute the basis of the present movement to overthrow the representative system, are rapidly being removed, without any change in the form of government. Under pressure of public opinion, than which there is no greater coercive power, lobbyists and their influences and that of the interests they represent, have largely disappeared. Stringent laws against trusts and combinations in restraint of trade and competition are being enforced everywhere—

sometimes to such an extent as to threaten legitimate business. Rebates and special privileges have vanished, and commissions have been established throughout the States to regulate rates, business methods, taxation and many other subjects of public interest. Laws limiting the hours of labor for women and children, for the protection of workingmen and providing compensation for injuries are being generally adopted; and there is hardly a subject of complaint which is not being investigated, and under process of correction, all under the representative system. Why then destroy the system and set up another, which in the past has caused the downfall of every people which adopted it?

It is also true, as every fair-minded man must admit, that the people, acting as a whole, cannot make satisfactory laws. The drafting of a law requires expert knowledge and experience. Care and deliberation are also required to so frame a law that it truly expresses the purpose sought to be accomplished. How absurd it would be to submit to popular vote the question how diphtheria should be treated or what remedy should be used in cases of scarlet fever or pneumonia. Yet such propositions are no more absurd than to permit a walking delegate to initiate a law regulating the complex operations of a railroad, and to submit it to popular vote, in a time of excitement when popular prejudice might be depended upon to secure the adoption of anything directed against corporate interests.

There is another stubborn fact which cannot be overlooked, and that is, the amazing indifference of the great mass of the voters. No system of government can work automatically so as to give effect to the will of the people. The form of government is only the machinery for accomplishing that purpose. The vital force that moves it is the people themselves. Government by the people under any form will always be government by such of the people as interest themselves and participate in its operations. If the, so-called, better class of voters, because they are absorbed in their own private affairs, are too indifferent to take part in public questions and are content to leave the running of the government in the hands of interested politicians, they have no ground for complaint. The opportunity is offered to all; and there never has been a time when the better element of the electorate if aroused could not control the situation. There is no trouble with the system. The difficulty lies with the people themselves, many of whom are now shouting their discontent and clamoring for a change.

I have already referred to the difficulties incident to the people as a whole attempting to formulate laws or prescribe the detail of intricate legislation. The representative system furnishes the means.

of accomplishing this, through agents selected for that purpose—just as a doctor would be selected to prescribe in case of serious illness, instead of submitting the question of treatment to a vote of the neighbors. As a rule, representatives are chosen because of some special fitness for the office, and naturally are superior in character and intelligence to the average of those who select them; and it is singularly true that the people generally take a greater interest in the election of individuals to office than in voting on abstract propositions, no matter how important they may be. Out of 100 persons voting for a supervisor, probably not one-half of them would vote, one way or the other, upon a constitutional amendment submitted at the same time. In this State, since 1850, 81 amendments and three constitutions have been submitted to the people to be voted upon. Whenever at these elections individuals were also voted for, in no one instance did the vote on the amendment (both for and against it) exceed 76 per cent of the total vote cast; in one case the vote on the amendment was 4-1/2 per cent. of the total vote cast, and the average for all of the elections was 42 per cent. In 1911, when the people of the Territory of Arizona voted upon a constitution to enable the Territory to be admitted as a State, the constitution was adopted by a small majority of those voting at the time, but the total number of votes cast in favor of the Constitution was only 37 per cent. of the votes cast for Governor at an election held only one year previous, and only about 20 per cent. of the estimated number of voters in the territory. These figures show conclusively that the people generally will not interest themselves in abstract propositions; and if the number of elections should be increased and complicated laws were continually being submitted, the interest of the voters would probably be still further diminished.

The administration of government is a great business, requiring special skill and experience. Modern life has become so complex and its interests so varied that the management of public affairs should be entrusted only in experienced hands. No stockholder of a great business company would think for a moment of submitting to a vote of the stockholders the question whether certain contracts should be made, or certain methods of manufacture abolished, and others, which pleased a particular stockholder, substituted in their stead. Yet this is precisely what the scheme of direct legislation seeks to accomplish. To permit it would be to throw to the winds all checks and balances calculated to secure mature deliberation, and to give free rein to every malcontent who might choose to experiment in the field of legislation.

The advocates of these radical ideas call themselves "Progressives,"

but the methods which they are proposing have been tried out over and over again for three thousand years. They deliberately shut their eyes to the experience of the past, and proclaim their crude and primitive ideas as though they were new discoveries in the science of government. The motive behind all of this is the purely selfish desire of individuals to impose their own particular views upon the public. No consideration is given to the interests of the people as a whole. Each shouter claims that his own voice is the voice of the people; and he assumes to speak in their name, when, in fact, he is advocating only his own egotistic notions.

I have an abiding faith in the judgment of the people, but it is in the mature and sober judgment which comes with knowledge and reflection upon which our institutions must rest. A government controlled by hysteria and hasty impulse must inevitably fall. The checks and balances contained in our constitution have, so far, protected us against too frequent and too radical changes, but if these safe-guards are removed, if laws and constitutional restrictions are to be disregarded, and hasty impulse and passion are to take the place of sober judgment and reason; if a majority of the people are unwilling to place restrictions upon themselves, for the protection of all; popular government will be proved a failure.) If the great mass of intelligent people, who are now so indifferent to public affairs and so engrossed in their own, would give but a small part of their time and attention to public questions and the selection of proper representatives, then there would be no difficulty under our present system in adequately protecting the interests and securing the welfare of all of the people and in giving effect to their will.

I do not question the motives or good faith of a great majority of those who are advocating the proposed changes under discussion, but they are seeing visions and are shutting their eyes to stubborn facts. Meanwhile others, inspired by less commendable motives, are making use of them to promote their own selfish ends. I am confident, however, that with knowledge will come wisdom and that the American people will again demonstrate to the world that they are capable of rationally governing themselves.

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